

**RESOLUTION NO. R-\_\_\_\_\_**

BE IT RESOLVED BY THE QUORUM COURT OF THE COUNTY OF BENTON,  
STATE OF ARKANSAS, A RESOLUTION TO BE ENTITLED:

A Resolution Affirming a Policy of the Benton County Sheriff Prohibiting the Use  
of Excessive Force and Addressing the Treatment of Individuals Engaged in Non-  
Violent Civil Rights Demonstrations.

WHEREAS, Benton County is applying for funds through the Arkansas  
Community and Economic Development Program; and

WHEREAS, as required by the Housing and Community Development Act of  
1974, as amended, the Quorum Court notes the following regarding policies adopted by  
the Benton County Sheriff and currently in force:

1. The Benton County Sheriff has adopted and is enforcing a Response to Resistance Policy attached hereto as Exhibit "A." Said policy addresses the use of force generally for all circumstances and would include circumstances where individuals are engaged in non-violent civil rights demonstrations. Said policy prohibits the use of excessive force.
2. The Benton County Sheriff has adopted and is enforcing a Demonstrations, Civil Disturbances, and Crowd Management Policy attached hereto as Exhibit "B." Said policy addresses "supporting objectives of protecting life, property, and critical infrastructure, maintaining public peace and order, while upholding the constitutional rights of free speech and assembly for those wishing to demonstrate peaceably."
3. That the Benton County Sheriff has not enacted, and Benton County has not adopted any more specific policy or law against barring entrance to or exit from a facility or location which is the subject of a nonviolent civil rights demonstration.
4. That pursuant to the policies described above, as well as in compliance with all Federal, Arkansas, and local laws, Benton County and the Benton County Sheriff are and will be mindful and protective of the rights of all participants in civil rights demonstrations, as well as any onlookers, bystanders, or any other persons located in the vicinity or owning property in the vicinity.

5. In connection with such demonstrations, the use of force shall be permitted only when necessary to protect the rights of individuals or to uphold the law. In no event shall the use of force be in excess of that allowed by law.

NOW, THEREFORE, BE IT RESOLVED BY THE QUORUM COURT OF BENTON COUNTY, ARKANSAS:

ARTICLE 1. That consistent with the goals and objectives of activities assisted under the Act, as amended, Benton County affirms the described policies of the Benton County Sheriff.

ADOPTED this \_\_\_\_\_ day of February, 2019.

APPROVED:

\_\_\_\_\_  
BARRY MOEHRING, COUNTY JUDGE  
DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
BETSY HARRELL, COUNTY CLERK  
SPONSOR: \_\_ JP Pat Adams  
DATE ADOPTED: \_\_\_\_\_  
Votes For:\_\_\_\_ Votes Against:\_\_\_\_  
Absent: \_\_ Present:\_\_ Absent:\_\_\_\_

**BENTON COUNTY SHERIFF'S OFFICE**  
**Law Enforcement**  
**Policies and Procedures**

<b>Subject:</b> Response to Resistance	<b>Policy Number:</b> 6.01
<b>Issue Date:</b> April 15, 2018	<b>Revision Date:</b>
<b>Approval Authority</b> <b>Title and Signature:</b> Sheriff Shawn Holloway	

**POLICY:**

Human life is sacred. Protecting innocent human life is the most important mission of the Benton County Sheriff's Office. Apprehending non-violent suspects and criminals is less important than protecting innocent human life, including the protection of your own life.

You should maintain a readiness and ability to act in instances where, in *your perception*, the use of force or deadly force may be appropriate. By maintaining readiness and a capacity to employ a variety of skill sets you reduce the likelihood of opposition and of the actual need for a forceful response. While *deputy discretion* is critical, the need to balance applications of force against accountability is essential. You should only use the amount of force reasonably necessary to protect life and enforce the law under guidelines established by the Constitution of the United States, the Constitution of this State, established state and federal law, and as articulated in this policy and procedures manual.

**DISCUSSION:**

Traditionally, the standards by which most use of force and deadly force actions employed by deputies occur in the light of the 4<sup>th</sup> Amendment to the US Constitution. However, when law enforcement deputies are involved in a force or deadly force incident in a correctional or inmate transport setting the employment of force or deadly force may be viewed under the 14<sup>th</sup> and 8<sup>th</sup> Amendments of the Constitution.

- **4<sup>th</sup> Amendment** rights apply to non-detained persons, arrestees, and pre-trial detainees, who have not been yet arraigned, and requires that the deputy's *actions ... be judged from the perspective of a reasonable deputy on the scene, rather than with 20/20 vision of hindsight ... the calculus of reasonableness must embody allowance for the fact that deputies are often forced to make-split second judgments in circumstances that are tense, uncertain, and rapidly evolving.*<sup>1</sup>
- **8<sup>th</sup> Amendment** applies to convicted individuals, and requires a determination

---

<sup>1</sup> Graham v. Conner, 490 U.S. 386 (1989).

that an excessive force claim must show malice, sadism, and intent to cause harm. The unnecessary and wanton infliction of pain and actions taken in bad faith and for no legitimate purpose are cruel and unusual punishment. *The question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on whether the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.*<sup>2</sup>

- **14<sup>th</sup> Amendment** applies to pre-trial detainees, who have been arraigned, but not yet convicted, and requires a determination of whether the force applied by a deputy was done with deliberate or reckless indifference with ... *a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking the conscience, necessary for a due process violation.*<sup>3</sup>

#### DEFINITIONS:

- **Authorized weapon** - A weapon approved by the Benton County Sheriff's Office and sanctioned for use by its employees. No weapon is authorized for carry or use unless the agency expressly approves it and the employee has demonstrated proficiency with the weapon type in accordance with agency guidelines.
- **Auxiliary weapons of availability** - An employee may become separated from their agency issued firearm or other authorized weapons. Should this occur, the employee might have access to a *weapon of opportunity*, including but not limited to a flash light, citation holder, handcuffs, tools, lumber, or any object that could be used as a weapon in the defense of self or another.
- **Baton or expandable baton** - An impact weapon capable of inflicting bodily injury by striking with a portion of the weapon. Only batons authorized by the agency are carried or used. Carrying or using saps, *billy clubs*, or *slapjacks* is prohibited.
- **Chemical weapon** - Weapons capable of temporarily incapacitating a person through the controlled release of some chemical irritant or agent.
- **Certification with weapon** - *Deputy* has demonstrated proficiency with a particular weapon, and been tested in its safe care and use. The deputy is thereby authorized to carry and use this weapon in the performance of his/her official duties regardless of whether the deputy is on-duty or off-duty.
- **Deadly force** - Action, with or without the use of a weapon, intended to cause death or serious bodily injury; or, the use of any object in a manner intended to

<sup>2</sup> Whitley v. Albers, 475 U.S. 312 (1986).

<sup>3</sup> County of Sacramento v. Lewis, 523 U.S. 833 (1998).

cause death or serious bodily injury.

- **Electronic Control Device [ECD]** – A *non-deadly force* weapon designed to stop an attack; subdue fleeing, belligerent, or potentially dangerous subjects; or stop a perceived threat of suicide or self-inflicted injury. In most configurations such devices are an electroshock weapon that uses electrical current to disrupt voluntary control of muscles. Also commonly referred to as a TASER™ irrespective of the actual maker due to this manufacturer's high profile presence in the market.
- **Exigent circumstances** - Conditions that are of such urgency and seriousness as to justify a warrantless entry, search, or seizure by deputies.
- **Firearm** - Any device designated, made, or adapted to expel a projectile through a barrel by using energy generated by rapidly expanding gases or any device readily convertible to that use; including all handguns, rifles, and shotguns.
- **Force or non-deadly force**- Actions not calculated under the circumstances to cause death or serious bodily injury.
- **Knife** - Any edged weapon that is designed to inflict serious bodily injury or death by stabbing, cutting, slicing, whether legal or illegal, and including swords, daggers, axes, hatchets, etc.
- **Lateral vascular neck restraint [LVNR]** - A method or manner of restraining or controlling a person by physically restraining the person's neck from behind. The technique involves the initial restraint of a person through contact and control methods, which may ultimately be used to incapacitate the person by rendering the person temporarily unconscious where the person refuses to submit to lesser levels of control.
- **Non-deadly force** - Procedures or weapons designed to provide *force*, but force not intended to kill. The *non-deadly force* concept is also commonly referred to as *less than deadly*, or *less than lethal* force. Regardless of the application name, reasonable deputies know that – although unlikely – any force, especially when applied under, *tense, uncertain, and rapidly evolving situations*, may cause injury, or death, despite the best intentions of the deputy.
- **Objectively Reasonable Standard** - All claims that law enforcement officials have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other *seizure* of a free citizen are properly analyzed under the 4<sup>th</sup> Amendment's *objective reasonableness* standard, rather than under a substantive due process standard.<sup>4</sup> As such, a reasonable deputy makes their force-option decision based on the actions of the suspect or detainee. If the suspect or detainee is non-resistive and compliant, the deputy has no reason to

---

<sup>4</sup>*Graham v. Connor* (490 U.S. 386).

resort to a force response beyond mere presence and instructions, and vice-versa. In essence, it is the suspect or detainee who forces a deputy to choose a force response.

- **Physical strength and skill** - Any physical actions by one or more deputies (e.g., holding, restraining, pushing, and pulling) which may include special skills (e.g., boxing, karate, and judo) but do not include the use of *deadly force* or any weapon.
- **Probable cause** - Sufficient reason, based upon known facts, to believe a crime has been committed or that certain property is connected with a crime. Probable cause must exist for a law enforcement deputy to make an arrest without a warrant, search without a warrant, or seize property in the belief the items were evidence of a crime. *Probable cause* is often subjective, but if the deputy's belief or even hunch was correct, finding stolen goods, the hidden weapon, or drugs may be claimed as self-fulfilling proof of probable cause. Technically, probable cause has to exist prior to arrest, search, or seizure.
- **Serious bodily injury** - Harm that creates substantial risk of death, serious permanent disfigurement, or loss or impairment of any body function or organ.

## PROCEDURES:

### Levels of Use of Force:

Use of force or deadly force is controlled by the basic elements of a reasonable deputy's perception and a reasonable deputy's response. Deputies may use only the level of force that is reasonably necessary to stop the perceived threat.

To better understand and explain *use of force* and force issues, deputy *perceptions* and deputy *force options* are illustrated in the Use of Force Continuum or *force continuum* that is located on the last page of this policy. This chart illustrates five levels of *perception* and five corresponding levels of *response*. Deputies are familiar with, and know how to apply and explain this *continuum*. Refer to the Use of Force Continuum, at the end of this policy.

Deputy's general perception and corresponding force options are:

- **Level 1 – (Compliant)** The suspect is *perceived* by the deputy to be *compliant*. The appropriate level of response is *cooperative controls*, including *deputy presence, hand signals, verbal commands and instructions, light touching or patting*, etc. In other words cooperation at this level is a *two way street*.
- **Level 2 – (Passively Resistant)** The suspect is *perceived* by the deputy to be *passively resistant*. The appropriate level of response is *contact controls*, including *strong or forceful soft hand, hand and arm-holds, pressured physical movement of the suspect, removal*, etc.
- **Level 3 – (Actively Resistant)** The suspect is *perceived* by the deputy to be *actively resistant*. The appropriate response is *compliance techniques*. This is the threshold for any reasonable deputy to consider this suspect to be a potential

violent threat to himself, deputies, or others. Compliance techniques may include *all reasonable means* to cause the *suspect to comply as soon as reasonably practical*. These techniques may include *use of chemical weapons, use of restraints, forced movement, forcing a suspect's limbs behind their back, forcing a suspect down on the ground or against a wall, or using other forms of rough physical force*, etc. Once suspects are perceived as actively *resistant*, deputies should not relax care until the subject is fully secured.

- **Level 4 – (Assaultive or a Threat to Bodily Harm)** The suspect is *perceived* by the deputy to be assaultive – *and a threat to serious bodily harm*. The appropriate level of response is *immediate defensive tactics*. The original assaultive behavior may have been directed at a fellow suspect, apparent victim, or the deputy. *Defensive tactics* may include *impact weapons, hard fist, electronic control devices, or any other reasonable means available* and at hand to stop the aggression, defend against the attack, or bring the suspect into compliance. It is contemplated and understood that reasonable deputies, while employing defensive tactics, may cause injury, serious injury, and in some isolated instances, death without intending such consequences.
- **Level 5 – (Assaultive & Serious Threat of Bodily Harm or Death)** The suspect is *perceived* by the deputy to be assaultive – *serious bodily harm or death*. The appropriate level of response is *deadly force*. Deadly force includes firearms, knives, or any other means immediately available that a reasonable deputy, in the same circumstance, would consider as potentially causing death or serious bodily injury.

#### **Tactics, Applications, & Deputy's Perceptions:**

- **Level 1 – (Compliant) No or Slight Apparent Potential for Harm**

**Arrival & Presence:** Deputy present at the scene. This includes proper voice and/or other identification, body language, and awareness by the subject that he is dealing with a deputy of the law. This may also include presence of the deputy's vehicle, seeing the deputy in his uniform, hearing deputy identification, etc. A reasonable person seeing and hearing these things normally alter their behavior, and respond to the deputy's instructions.

**Interview Stance:** The deputy adopts a stance outside his danger zone that provides appropriate protection and forms the basis of an effective physical response if attacked.

- **Level 2 – (Passively Resistant) Moderate Potential for Physical Harm**

**Dialogue Between Parties:** A two way, controlled, non-emotional communications between the deputy and the subject, aimed at a problem identification and/or resolution.

**Verbal Direction:** Deputy asks, advises, or commands subject to engage in, or refrain from, a specific action or non-action.

**Soft Hand Techniques:** Deputy may choose to employ some assistance in movement, compliance, or removal from the immediate scene.

- **Level 3 – (Actively Resistant) Moderate Potential for Physical Harm**

**Restraint Devices:** Mechanical tools used to restrict a subject's movement and facilitate searching such as, handcuffs, flex cuffs, leg irons, belly chains, optional nylon restraining devices etc.

**Chemical Agents Individual Protection Devices:** CS/OC spray agent used to subdue or bring a subject into compliance.

**Transporters:** Techniques used to control and/or move a subject from point A to point B with the minimum effort by the deputy or to gain and retain control over the subject.

**Takedown:** Techniques that redirect a subject to the ground in a controlled manner to limit physical resistance and to facilitate the application of a restraint device, and to prevent intentional injury to the subject.

**Pain Compliance:** Techniques designed to force a subject to comply with a deputy, as a result of the deputy inflicting controlled pain upon specific points in the subject's body such as pressure point techniques.

- **Level 4 – (Assaultive & A Threat to Bodily Harm) Serious Potential for Physical Harm**

**Electronic Control Device:** Is a Level 4 application of force, when properly employed. Such devices are not used on persons known to have implanted medical devices such as *pace makers*, *timed medical dispensing mechanisms*, or diagnosed with *heart conditions*.

**Incapacitation:** Techniques intended to stun or render a subject temporarily unconscious. These techniques may be an impact weapon, a strike to a major nerve area, or lateral vascular neck restraint.

**Intermediate Weapon:** Impact weapons that are primarily used to control a subject such as a baton, expandable baton, Taser®, and/or agency canine.

**Lateral Vascular Neck Restraint:** Should only be applied when other takedown and restraint procedures have failed. As with other Level 4 devices and techniques, only deputies trained and practiced in the technique should attempt to apply it.



- **Level 5 – (Assaultive & Serious Threat of Bodily Harm or Death) High Potential for Great Bodily Harm or Death**

**Deadly Force:** Techniques and implements that by their very nature are known to cause death or serious injury. To employ deadly force deputies must perceive that an imminent threat to their life or the life of another is present.

**Firearm Special Munitions:** Special munitions fired, launched, or discharged from a service handgun, shoulder weapon, or vehicle mounted weapon constitute a Level 5 application of the use of force, and is used with extreme care. Although often referred to as *less-lethal*, deputies know that the *less* refers to *less chance of causing death or serious bodily injury*. Special munitions rounds are not to be deliberately fired or thrown at the face, chest, neck, or spine of any individual. For more information on special munitions, refer to policy *Special Munitions – Distraction Devices, & Special Munitions – Less Lethal*.

It is important to remember that almost all incidents faced by you are not scripted, easy to understand, or predictable as to outcome. Use your best effort to determine the threat level and apply the corresponding response. Time permitting, take care in evaluating a suspect's actions and perceived threat level. If there is reasonable doubt and time permits, seek assistance before acting. Justification for the use of force and deadly force is limited to what is *known or reasonably perceived* by you at the time of the incident. Facts unknown at the time force is used should not be considered later to determine whether the force you employed was justified.

You may not intentionally use more force than is necessary and reasonable under the circumstances. Likewise you may never use force in response to mere verbal provocation or abusive language directed at you. Remember, you should never use deadly force, except to protect his/her life, or the life of another human being.

**Application of Use of Force & Deadly Force:**

Application of *deadly force* and *force* are authorized only to achieve the following lawful objectives to:

1. Defend self, or the general public against threats of serious bodily injury or death;
2. Stop dangerous flight, where there is imminent risk to the public of death or serious bodily injury;
3. Prevent roaming at large by obviously mad or vicious animals; to relieve animals so badly injured that it cannot reasonably survive from injuries causing prolonged suffering;
4. Stop imminent damage to or theft of property, which by its removal or damage seriously threatens the life or safety of the general public.

Only when there is a reasonable expectation that altered or damaged property may place others in imminent risk of death or serious bodily injury is the application of *deadly force* appropriate to protect property. Some examples of the use of deadly force to

protect property are stopping a suspect from setting a fire, or throwing an explosive or fire bomb; preventing serious damage to a bridge; stopping sabotage to railroad tracks; or deterring the use or theft of what appears to be a weapon of mass destruction, bomb, or other military equipment.

Application of *force* but not *deadly force* is authorized only to achieve the following lawful objectives to:

1. Preserve the peace;
2. Defend themselves, or others against unlawful violence;
3. Prevent the commission of self-inflicted injury or suicide by any person;
4. Make lawful arrests or searches; to overcome resistance to such arrests or searches; and to prevent escape from custody;
5. Prevent or interrupt an intrusion on, or interference with the lawful possession of property;
6. Prevent roaming at large by obviously mad or vicious animals, or to relieve animals so badly injured that it cannot reasonably survive from injuries causing prolonged suffering.

Before using any physical force against a suspect, beyond Level I, insure you:

1. Have probable cause to arrest that suspect;
2. State your intentions to arrest, and identify yourself using your official title;
3. State the reason for the arrest.

Amount and degree of force you may use to achieve an objective takes into consideration the following issues:

1. Nature and seriousness of the offenses committed by the suspect;
2. Threat posed to other persons or the general public if the suspect's behavior continues;
3. Nature and seriousness of the risk of injury to you or others;
4. Age, physical condition, and behavior of the suspect;
5. Age, physical condition, and physical position of yourself;
6. Relevant actions by any third parties;
7. Physical conditions i.e., visibility, etc. at the scene;
8. Feasibility and availability of alternative actions;
9. Opportunity and actual ability of the suspect to injure you, himself, or others.

Before using force (but not *deadly force*) when protecting a person from self-inflicted bodily injury [suicide attempt] or from uncontrollable circumstances, consider other available alternatives to protect that person from harm.

You may use unauthorized objects as weapons, or use weapons in unauthorized manners if emergency circumstances make it necessary to protect human life and prevent serious injury. By extension, you may draw and ready any authorized weapons for use only when they reasonably anticipate that they may have to use such weapon(s). This does not require you to use the weapons.

**Use of Non-Deadly Force:**

You may use physical strength and skill, restraint devices, chemical weapons, electronic weapons, or impact weapons to apply non-deadly force only.

There is no obligation to *retreat* or *back down* before resorting to approved use of force, including deadly force. However, you may consider retreat or withdrawal where delay could make a more peaceable arrest, or stop, likely if such tactics would not increase risk to self or others. In some cases, an increased show of force may reduce the amount of force necessary to accomplish the objective.

Do not attempt to affect arrests alone if there is substantial risk to you from the arrestee or another party unless there are no available reasonable alternatives.

Use handcuffs or other restraining devices on all arrestees unless it is obviously unnecessary or impractical i.e., the elderly, young juveniles, amputees, crippled, injured, or other applicable subjects. You should take reasonable precautions to protect arrestees from injury caused by handcuffs or other restraining devices. Only restraining devices and techniques approved by the agency may be used.

You may use chemical weapons for self-protection, or to subdue a person unlawfully resisting arrest. Any person upon whom a chemical weapon has been used are treated or decontaminated for exposure to the chemical agent as soon as practical and thereafter monitored for possible latent effects. Likewise, you may use approved electronic weapons in accordance with this policy. An electronic weapon is only be used to protect persons from assault or to subdue persons unlawfully resisting arrest.

Lateral Vascular Neck Restraints [LVNR] are only used to restrain a person if you are trained and practiced in the proper techniques of applying and using LVNR and have periodically demonstrated a proficiency in the use of the techniques. However, you do not use a *choke hold* as a method of controlling or restraining a person.

Impact weapons are employed to protect yourself or another from assault or to arrest a person who unlawfully and violently resists arrest if lesser methods have failed, or if circumstances warrant the immediate use of the baton. However, you should:

1. Avoid baton blows that are capable of inflicting serious bodily injury;
2. Not raise the baton above the head to strike someone or use the baton as a club or bludgeon;
3. Deliver only short snappy body blows to vulnerable areas in order to temporarily incapacitate subjects;
4. Not deliberately strike the *face, head, neck, collarbone, spine, kidney area, solar plexus, knees, or elbows*.

Deputies not trained and currently certified with impact weapons are not authorized to use flashlights or other similar devices as substitutes, except in extreme life-threatening emergencies.

### **Use of Deadly Force Limitations:**

Deadly force may not be used under the following circumstances:

1. As a warning or threat;
2. With the intent to maim or cripple a person;
3. On a person who has not caused or threatened to cause serious bodily injury or death to another person, including the deputy;
4. On a person who simply flees or evades arrest;
5. Merely to prevent the destruction or theft of property; or
6. When you have a reasonable doubt as to the justification for using deadly force.

### **Mentally Ill Subjects & Force Limitations:**

The primary objective when responding to a non-violent mental health incident is to support EMS personnel in containing the situation, securing the scene, and assisting in restraining the individual for treatment or transport. In many cases, you may be the first on the scene. As such, begin evaluation and containment procedures until EMS arrives. Once EMS is on the scene of a non-violent suspect, follow their lead.

Without endangering yourself or others safety, limited hostility is usually not met with high levels of force; but rather, with carefully applied *deputy presence* and efforts to restrain the suspect with the least force practical. Mentally ill subjects often do not react conventionally to orders and no two responses are the same. First, think safety and treatment not rapid restraint. The use of force beyond Level III is limited to situations where you observe assaultive behavior or perceive a threat of bodily harm or death to those present. For additional guidance refer to our Mentally Ill Persons policy.

Electronic Control Device [ECD] use as a pain compliance tool against a resisting mentally impaired subject is prohibited unless you can articulate *immediate danger* apart from resistance alone. This is true whether the ECD is used in probe or drive stun mode. Guidance from the federal court says ... *At bottom, 'physical resistance' is not synonymous with 'risk of immediate danger. Even noncompliance with police directives and non-violent physical resistance do not necessarily create 'a continuing threat to the deputies' safety.*<sup>5</sup>

### **Reporting Use of Force Incidents:**

Deputies, who discharge a firearm, use chemical weapons, electronic weapons, impact weapons, special weapons, knives, or who were involved in a bodily injury to themselves or other persons by use of force or deadly force should notify their direct supervisor immediately. In such instances you are required to complete a written report detailing the circumstances surrounding the use of force incident. The use of force report is to be completed and entered into the Blue Team software system. The completed report will be reviewed and approved by the shift supervisor and forwarded through the chain of command.

In incidents where you or a fellow deputy causes serious bodily injury or death through

---

<sup>5</sup>Armstrong v. Village of Pinehurst, et al, 4<sup>th</sup> Circuit, No. 15-1191 (2016).

the application of deadly force, first call for medical assistance, secure the scene as well as possible, and then notify their direct supervisor. Upon arrival, the supervisor takes charge of the scene along with any investigation concerning the incident and reports the incident through the chain of command to the Sheriff.

In incidents involving the use of force, all deputies assist in every way possible with the investigation. Any report required by this policy receives executive review in an effort to:

1. Protect the integrity of the facts and the evidence;
2. Ensure that the deputy's use of force complied with all appropriate state and federal laws, and agency policy;
3. Determine if the deputy's use of force indicates a need for special counseling, training, or disciplinary action;
4. Determine whether the situation requires further action;
5. Evaluate the need for additional or future, training.

### **Reporting Requirements:**

The Sheriff is notified immediately when any type of deadly force is used and there are resulting *serious physical injuries or death*.

If you witnessed the incident or responded to the scene, you must complete a written report. These witness reports are completed no later than the conclusion of the shift in which the incident occurred and filed with the on duty supervisor.

Deputy(s) who actually used or employed the deadly force are *relieved of duty with pay* at the scene, and follow-up action handled in accordance post-shooting procedures. For more information on reporting issue refer to policy *Post-Shooting Incident*.

Reports completed by your use of force, other deputies or witnesses include the following:

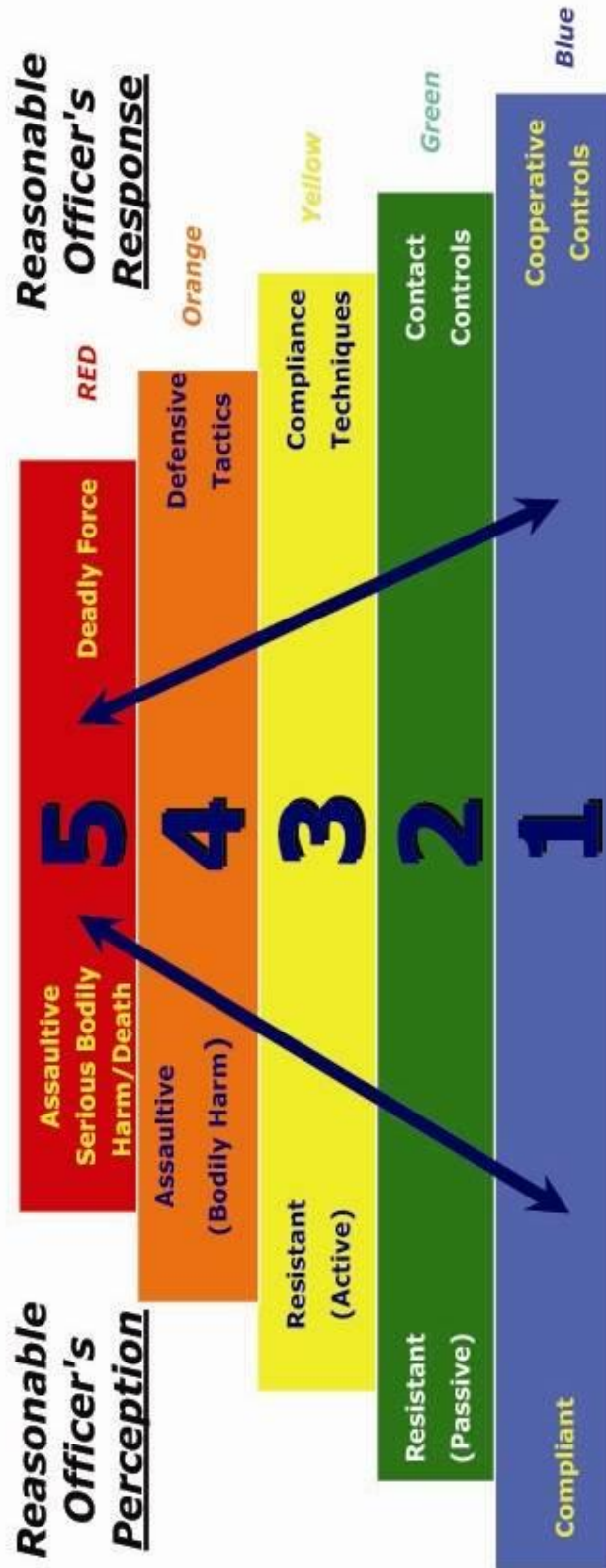
1. Description of the events leading to the use of force or deadly force;
2. Original offense or *probable cause* for the stop or action;
3. Accurate description of the incident and reasons for employing force;
4. Description of the weapon or device used and the manner in which it was used;
5. Description of the injuries suffered, and the treatment given or received;
6. List of all participants and witnesses to the incident;
7. Copy of all incident reports compiled because of the incident.

The Sheriff formalizes criteria for reporting incidents. Reports of all injuries are filed in the central file and the employee's personnel record.

### **Allegations Against Agency Personnel:**

The Chief Deputy or Professional Standards Unit investigates all allegations of improper use of force & deadly force, after notifying the Sheriff. In cases where possible criminal acts are involved, the appropriate law enforcement agency or prosecutor office is notified.

# Use of Force



 **Officer Enforcement Options**

**BENTON COUNTY SHERIFF'S OFFICE**  
**Law Enforcement**  
**Policies and Procedures**

<b>Subject:</b> Demonstrations, Civil Disturbances, & Crowd Management	<b>Policy Number:</b> 7.03
<b>Issue Date:</b> April 15, 2018	<b>Revision Date:</b>
<b>Approval Authority</b> <b>Title and Signature:</b> Sheriff Shawn Holloway	

**POLICY:**

The Benton County Sheriff's Office works to apply the appropriate level of support, direction, and control to public demonstrations with the mutually supporting objectives of protecting life, property, and critical infrastructure, maintaining public peace and order, while upholding the constitutional rights of free speech and assembly for those wishing to demonstrate peaceably.

**DEFINITIONS:**

- **Crowd Control** - Tactics used to address unlawful public assemblies, including a formidable number of deputies, crowd containment activities, dispersal tactics, and arrest procedures.
- **Crowd Management** - Techniques used to manage lawful public assemblies before, during and after an event to maintain the event's lawful status. Effective crowd management is furthered in part through *coordination with event planners and group leaders, permit monitoring, and past event critiques.*
- **Demonstration** - A public display of a group's or individual's feeling(s) toward a person(s), idea, cause, etc. and includes, but is not limited to, *marches, protests, student walk-outs, assemblies, and sit-ins.* Such events and activities usually attract a crowd of persons including participants, onlookers, observers, media, and other persons who may disagree with the point of view of the activity.
- **Police Liaison** - An individual appointed by a group of demonstrators to liaison and coordinate with the agency, usually through the Benton County Sheriff's Office Incident Commander [IC].

- **First Amendment Activities** - 1<sup>st</sup> Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression.

Common First Amendment activities include, but are not limited to, *speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, to convey a message*. These activities involve *freedom of speech, association, and assembly and the right to petition the government*, as guaranteed by the First Amendment of the United States Constitution. As such, persons have the right to march, demonstrate, protest, rally, or perform other protected activities.

Local and the federal government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

## DISCUSSION:

Our agency's Public Demonstrations, Civil Disturbances, & Crowd Management approach applies the following general principles:

### 1. Planning:

- a. Command staff is notified immediately of any large or potentially disruptive demonstrations and/or crowd events.
- b. An Incident Commander [IC] shall be responsible for the development of a written operations plan. Incident Command System [ICS] is used to protect protestor's rights, manage crowds, and acts of civil disobedience.
- c. The IC makes efforts to establish contact and communication with the event or demonstration planners when identifiable.
- d. Spontaneous demonstrations or crowd events, which occur without prior planning or without prior notice to authorities, present less opportunity for planning and prevention efforts. Nonetheless, the IC makes efforts to coordinate with demonstration leaders when practical, and to coordinate safety and response issues.



**2. Deployment:**

Decisions about crowd dispersal and general strategies about crowd containment or crowd redirection are made at the (IC) level or higher.

If such decisions are made by higher-ranking offsite officials, it is required that the IC first be consulted about the state of affairs in the field and the potential consequences of the decision. All such decisions are documented in writing including time, person making the decision, and the precise decision and directions given. Such documentation is made at the time of the decision or as soon thereafter in an Incident Report. This guideline does not preclude individual supervisors and deputies from defending themselves or others from imminent danger, or significant destruction of property when the delay in requesting permission to take action would increase the risk of injury or loss.

Deployment tactics include considerations such as:

- a. Recognition that the designated *police liaison* may change during the course of an event and that leadership of certain groups may not exist nor desire to be identified.
- b. A communication effort with the identified police liaison continues even if enforcement actions commence.
- c. Staffing levels permitting, some deputies are deployed to the best available vantage points to observe and report crowd actions. These deputies may also serve to document events with video and still photography.
- d. Lines of control and movement are established, especially in events there are differing groups of protesters with opposing views. Whenever possible, hostile factions should be separated.
- e. Considering the type of crowd involved is an important factor in responding properly to its behavior. Demonstrators may vary from cooperative or celebratory to non-compliant, hostile, and combative. Organized demonstrations in which some engage in coordinated, nonviolent civil disobedience may be distinguished, to the extent possible, from crowds in which substantial numbers of people are engaged in unlawful acts.

**3. Policing a Crowd:**

Sufficient resources to make multiple simultaneous arrests should be available at demonstrations where such arrests are a reasonable possibility.

Where additional resources are needed, they are best deployed so they are not readily visible to the crowd. When practical, deputies should be at their posts well in advance of arriving participants. In general, deputies work together in squads or platoons deploying for a counter-demonstration.

Regardless of whether a parade or demonstration permit has been obtained, deputies try to facilitate demonstrations that may *temporarily block traffic* and/or otherwise use public streets by regulating and/or rerouting traffic as much as practical. For a demonstration without a pre-planned route, the IC evaluates the size of the crowd with regard to whether demonstrators are required to stay on the sidewalk or whether demonstrators should be allowed to be in one or more lanes of traffic. This does not mean demonstrators may deliberately disrupt commuter traffic and/or bridge or highway approaches.

Deputies avoid negative verbal engagement with members of the crowd. Verbal abuse against deputies does not constitute a reason for an arrest or for any use of force against such individuals. Deputies must not be affected by the content of the opinions being expressed nor by the race, gender, physical disabilities, appearances, or affiliation of those exercising their lawful rights.

Deputies work to maintain professional demeanor and remain neutral in word and deed despite minor unlawful or anti-social behavior on the part of crowd members. Unprofessional deputy behavior can inflame a tense situation and make control efforts more difficult and dangerous. In many cases, *deputy overreaction* is a main goal of organized demonstrators.

Deputies do not go into an obviously hostile crowd solely to communicate with the crowd. Likewise, deputies do not penetrate a crowd for an individual arrest unless the targeted individual is involved in serious criminal conduct and the decision to move is given by supervisor.

The use of force is restricted to circumstances authorized by law and to the degree reasonably necessary in light of the circumstances confronting deputies at the scene. Exceptions include actions to direct crowd and vehicular movement, enforce ordinances and statutes, and employ that physical force necessary to maintain the safety of the crowd, the public, law enforcement personnel and emergency responders.

## **PROCEDURES:**

### **Responses to Crowd Situations**

#### **1. Spontaneous Event or Incident:**

- a. The senior shift supervisor responds to the scene of spontaneous events, when practical, and takes command of the incident as IC Commander until relieved by a ranking deputy.
- b. The IC announces over the agency radio system that he or she has assumed command over the incident. When practical, as necessary a command post is established.
- c. An immediate assessment of the situation is essential for effective enforcement response. The IC conducts a preliminary assessment to ascertain the following:
  - i. Location and type of event.
  - ii. First Amendment issues to determine lawfulness of the actions by individuals and groups.
  - iii. Approximate number of specific individuals engaged in any unlawful conduct.
  - iv. Likelihood that unlawful behavior may spread to other crowd participants.
  - v. Immediate threats to the safety of the public and/or deputies.
  - vi. Number of structure(s) or vehicle(s) involved.
  - vii. Size of the involved area.
  - viii. Number of additional deputies and agency resources needed such as traffic, SWAT, surveillance, investigators, etc.
  - ix. Other resources needed such as paramedics, the fire department, outside agencies, etc.
  - x. Appropriate level of response (Code 1, 2, or 3).
  - xi. Location of staging area.
  - xii. Location for a media staging area.
  - xiii. Ingress and egress routes.

#### **2. Planned Event Involving Potentially Large Crowds:**

Upon notification from a group organizer, the IC is appointed who develops a written DRAFT operations plan for the Sheriff's approval. The following factors are considered and outlined in the plan:

- a. What type of event is to occur?
- b. Who are the organizers? What is their past record of conduct, i.e., peaceful, violent, cooperative, etc.?
- c. Will outsiders visibly and/or physically oppose the planned event?
- d. Will the event involve the use or abuse of alcohol or other substances?
- e. Where is the event to occur? Consider the size, location, and ingress and egress points.
- f. What is the optimal site for a command post as well as staging areas?

- g. Have other agencies, bureaus, and divisions been notified and included in the planning process (paramedics, fire department, communications, intelligence, etc.)?
- h. Will special units be needed?
- i. Is Mutual Aid needed?
- j. Is it practical or appropriate to coordinate with group organizers and explain the Department's mission, preparation, and potential responses?
- k. Have the proper number of personnel been scheduled to safely handle the event? Should a reserve force be available?
- l. Is there a need for formulation of a specific enforcement policy to be communicated to affected personnel for this event?
- m. Are permits required and approved for this event?

Once the DRAFT plan is completed and approved by the Sheriff, the assigned IC:

- a. Meets with event sponsors and group leaders to exchange information and to present agency philosophy and intent. Details of the plan and preparation are not disclosed except as necessary to ensure success of the operation.
- b. Coordinates with affected Benton County Sheriff's Office entities regarding details and additions to the operations plan.
- c. Prepares the Final Operations plan and submits it to the Sheriff for approval.
- d. Inspects protest/event area prior to an event to locate any pre-positioned equipment staged by demonstrators.
- e. Ensures that appropriate equipment and supplies are available.
- f. Ensures that a video team(s) is established and required video equipment is available.
- g. Establish protocols and procedures for the processing of arrestees and collection of evidence.

### 3. **Permissible Crowd Control & Crowd Dispersal Techniques:**

In the event of a *declared unlawful assembly*, it is generally an effective practice to use multiple simultaneous arrests to deal with a non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protest. This is generally preferable to dispersing the demonstrators by using weapons or force beyond that necessary to make the arrests. After consultation with staff, the IC makes the final decision as to what control action, if any, may be taken to address the crowd situation. Certainly, crowd size and available resources factor into the response, and other factors may include:

- a. Will enforcement action likely improve the situation?
- b. Will targeting specific violent or disruptive individuals for arrest be more effective or appropriate than applying control tactics to a wider crowd?
- c. Are sufficient resources available to effectively manage the incident?

- d. Have clear and secure escape routes been established for both the crowd and the deputies?
- e. Has the dispersal order been given (loudspeaker, personal contact, etc.)?
- f. Are contingency plans established in the event initial enforcement actions are ineffective?
- g. Are our plans, tactics, and resources flexible enough to allow for changes as crowd actions and reactions change?
- h. Have we considered and taken reasonable steps to provide for bystander safety?

**4. Unlawful Assembly:**

The Benton County Sheriff's Office does not disperse a demonstration or crowd event before demonstrators have acted illegally or before the demonstrators pose perceived danger of imminent violence. The mere failure to obtain a permit, such as a *parade permit* or *sound permit* **is not** a sufficient basis to *declare an unlawful assembly*, as this is an administrative violation. There must be criminal activity or a perceived danger of imminent violence.

Likewise, the fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts at prior events or demonstrations **is not** grounds for declaring an assembly unlawful.

Unless emergency or potentially dangerous circumstances prevent negotiation, crowd dispersal techniques are not initiated until after attempts have been made through contacts with the *police liaisons* or *crowd event leaders* to negotiate a resolution to cease the dangerous or unlawful activity and First Amendment activity can continue peacefully.

**5. Declaration of Unlawful Assembly:**

When the only violation present is unlawful assembly, the crowd should be given an opportunity to disperse rather than face arrest.

Crowd dispersal techniques are not initiated until the IC has made repeated announcements to the crowd, asking members to voluntarily disperse and informing them that, if they do not disperse, they are subject to arrest. These announcements are made using adequate sound amplification equipment in a manner that is audible over a sufficient area. Announcements are best made from different locations when the demonstration is large and noisy. Dispersal orders are repeated after commencement of the dispersal operation so that persons not present at the original broadcast understand that they must leave the area. The announcements should specify adequate escape routes.

Dispersal orders should not be given until deputies are in position to support and direct crowd movement. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time is allowed for the crowd to comply with the order.

No two events are exactly alike; however, the following dispersal order or one similar is broadcast:

*I am (rank/name), with the Benton County Sheriff's Office. I hereby declare this an unlawful assembly. I command all those assembled at ///describe location/// to leave immediately.*

*If you do not do so, you may be arrested or be subject to other enforcement action, including the use of force which may result in serious injury. Arkansas Law, prohibits remaining present at an unlawful assembly. If you remain in the area, regardless of your purpose, you are in violation of the law. The following routes of dispersal are available ///define routes///. You have ///insert number of minutes/// to leave. If you refuse to move, you will be arrested.\**

*\*If you refuse to move, chemical agents<sup>1</sup> will be used.*

At any point at which a crowd is dispersing, whether as a reaction to dispersal techniques, through voluntary compliance, or because of discussion or negotiation with crowd leaders, dispersal techniques are suspended and the crowd is allowed to disperse voluntarily. The IC may reinstate dispersal techniques if crowd compliance ceases.

## **TACTICS:**

### **1. Approved Tactics and Weapons to Disperse or Control a Non-Compliant Crowd:**

If negotiation and verbal announcements to disperse do not result in voluntary movement of the crowd, deputies may employ additional crowd dispersal tactics. Permissible tactics to disperse or control a non-compliant crowd include the following that are not presented in any particular order of use:

- a. **Display of enforcement deputies (forceful deputy presence)** - Once this tactic is selected, deputies are assembled in formation at a location outside the view of the crowd. The formation may be moved as a unit to an area within the crowd's view. This tactic is not used unless there are sufficient personnel to follow through with dispersal. Do not bluff a crowd. If a display of deputies, vehicles, and mobile field forces, combined with a dispersal order, is not effective, actions that are more forceful may follow. Generally, deputies should be assigned to squads of sufficient size to be effective.

---

<sup>1</sup> Provide the chemical warning only if use is anticipated.

- b. **Encirclement and Arrest** - If the crowd has failed to disperse after the required announcements, deputies may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests. Arrests of non-violent persons is accomplished by *verbal commands and persuasion, handcuffing, lifting, carrying, the use of dollies and/or stretchers, and/or the use of control holds*. Control holds are only used when a supervisor determines that control holds are necessary to accomplish the enforcement goal after other methods of arrest have failed or are not practical. Caution should be taken to limit injury or subjection to unnecessary pain, yet to accomplish the task.
- c. **Use of Batons** - If a crowd refuses to disperse after the required announcements, the deputies may use squad or platoon formations (skirmish line, wedge, echelons, etc.) to move the crowd along. In such instances, batons are used for crowd control, crowd containment, or crowd dispersal as specified below:
  - i. Batons may be visibly displayed and held in a ready position during squad or platoon formations.
  - ii. When reasonably necessary for protection of the deputies or to disperse individuals in the crowd pursuant to the procedures of this policy, batons may be used in a pushing or jabbing motion.
  - iii. Baton jabs are not used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest.
  - iv. Baton jabs are not used in a crowd control situation against an individual who is physically unable to disperse or move because of the press of the crowd or some other fixed obstacle.
  - v. Deputies shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine, or groin or jab with force to the left armpit except when the person's conduct is creating an imminent threat of serious bodily injury or death to a deputy or any other person. Batons shall not be used against a person who is handcuffed.

- d. **Crowd Control Chemical Agents** - Crowd control chemical agents are chemical agents designed and intended to move or stop large numbers of individuals in a crowd administered in the form of a delivery system that emits the chemical agent diffusely without targeting a specific individual. Chemical agents can produce serious injuries or even death. An elderly person or infant in the crowd or an individual with asthma or other breathing disorders may have a fatal reaction to chemical agents even when those chemical agents are used in accordance with the manufacturer's recommendations. Thus, crowd control chemical agents are used only if other techniques, such as encirclement and multiple simultaneous arrest or tactical formations, have failed or are reasonably calculated not accomplish the enforcement goal. Guidelines for dispersal include:
- i. Use the minimum amount of chemical agent necessary to obtain compliance.
  - ii. Indirect delivery or crowd dispersal spray and/or discharge of a chemical agent shall not be used in demonstrations or other crowd events without the approval of a supervisor or command deputy.
  - iii. If chemical agents are contemplated in crowd situations, the IC has medical personnel on site prior to use and makes provision for decontamination and medical screening for those affected by chemical agent(s).
- e. **Hand-thrown chemical or pyrotechnic gas dispersal devices** - Hand-thrown dispersal devices are not used for crowd control or crowd dispersal without the approval of the IC. The use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel. Such devices are deployed to explode at a safe distance from the crowd to minimize the risk of personal injury and to move the crowd in the directions that accomplish the tactical objective.

2. **Weapons & Tactics Prohibited for Crowd Control or Dispersal:**

Except in *exigent circumstances* where demonstrators are themselves using deadly force against deputies, the public, or causing major property loss, i.e., *throwing firebombs, rocks, setting vehicle or building on fire, or shooting, etc.* the following items objects and tactics are not deployed:

- a. **Deadly Force** - Use of deadly force by deputies is governed by the *Use of Force & Deadly Force Policy*. Nothing about a crowd control situation eliminates or changes any of the constraints and criteria governing the use of deadly force.
- b. **Canines** - Canines are not used for crowd control, crowd containment, or crowd dispersal.
- c. **Fire Hoses** - Fire hoses are not used for crowd control, crowd containment, or crowd dispersal.



### 3. Arrests

#### **Multiple Simultaneous Arrests:**

When a large-scale event involving possible arrests is to be conducted, planners estimate the number of likely arrestees and configure arrest teams capable of managing multiple arrests safely. This tactic can be effective in dispersing the remaining crowd members wanting to avoid arrest. Pre-arrangements for secure transport are part of the tactical arrest plan. The IC makes the decisions to engage in selective individual arrests or multiple simultaneous arrests as a crowd control technique while considering the following factors:

- a. What is the likelihood that enforcement action can improve the situation relative to taking no action?
- b. What is the seriousness of the offense(s) as opposed to the potential for the arrest to escalate violence or unlawful activity by crowd members?
- c. Are individual or mass arrests more effective in ending the criminal activity at issue?
- d. Have clear and secure escape routes been established for the crowd and enforcement deputies?
- e. Has communication been established with crowd representatives?
- f. What contingency plans are available?
- g. What types of force can be used in effecting the arrests, if necessary?
- h. Is there probable cause for each individual arrest?
  - i. Arresting deputies take action to ensure that evidentiary items are recovered and preserved, when possible, to corroborate unlawful acts.

#### **Arrests for Civil Disobedience:**

Some demonstrators commit *civil disobedience*, by sitting down or otherwise blocking streets, intersections, sidewalks, and/or entranceways or by occupying a targeted offices or buildings.

The proper response to such actions is to verbally advise the demonstrators that they are subject to arrest if they choose to remain, allow time for some or all the demonstrators to cease the unlawful activity, and to arrest those who deliberately remain in violation of the law. When practical, demonstrators committing civil disobedience are persuaded into compliance rather than being forcibly detained.

Those passively resisting arrestees, i.e., arrestees who go limp, lying down, etc. are taken into custody by handcuffing and then either by verbal persuasion, lifting, carrying, the use of dollies or stretchers, and/or control holds depending on the circumstance and available resources.

In some cases, demonstrators may lock arms or use lock boxes to slow down the arrest process. Where such demonstrators have been advised that they are subject to arrest if they choose to remain and refuse to disperse, a member of the arrest team individually advises each demonstrator that he or she is under arrest prior to the application of any force to remove locking devices or to move the demonstrators. The deputy continues to give verbal directions to give the arrestee a chance to comply before force is used to unlock arms or implements used to disconnect the group.

Although dealing with passive resistance may frustrate deputies, such civil disobedience is usually a nonviolent means of making a political statement, and deputies will remain neutral, non-antagonistic, and professional in their response.

**Use of Handcuffs & Flex-cuffs:**

Persons subject to arrest during a demonstration or crowd event are handcuffed in accordance with agency policy, orders, and training.

Deputies involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available. When arrestees complain of pain from overly tight flex cuffs, deputies examine the cuffs to ensure proper fit and re-cuff as necessary.

**Arrest of Juveniles:**

Juveniles arrested in demonstrations shall be handled consistent with policy on arrest, transportation, and detention of juveniles.

**4. Documentation**

**Video and Photographic Recording:**

During demonstrations, the Benton County Sheriff's Office will videotape and photograph in a manner that minimizes interference with people lawfully participating in First Amendment activities, and to document actions of deputies protecting the rights of demonstrators and others.

Videotaping and photographing of First Amendment activities shall take place when authorized by the IC or senior on-scene supervisor. Each recording operator writes a supplemental report at the end of their duty assignment documenting camcorder operations.

If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to a Professional Standards or citizen complaint investigation or proceedings or to civil litigation arising from deputy conduct at the demonstration, the video recording and/or photographs are

destroyed in accordance with agency policy. Such videos may be retained for a longer period for use as training aids.

**5. Reporting:**

The IC completes an after-action report for each event in addition to verbal and other reports forwarded to the Sheriff. Deputies involved in demonstrations or crowd events prepare reports as required by the IC and other supervisors.

**6. Public Information and the Media:**

The news media has a right to cover demonstrations, including the right to record the event on video, film, or in photographs. Deputies accommodate the news media in accordance with agency policy. The media is permitted to observe and shall be permitted close enough access to record the action. Even after a dispersal order has been given, clearly identified media is permitted to carry out their professional duties in any area where arrests are being made unless their presence would unduly interfere with the enforcement action.

*Self-identified legal observers and crowd monitors* do not have the same legal status as the professional news media and are, therefore, subject to the laws and orders similar to any other person or citizen. Such individuals must comply with dispersal orders similar to any other person or citizen. A supervisor or the IC may allow a person who self-identifies as a legal observer or crowd monitor to remain in an area after a dispersal order if circumstances permit if the person's presence does not interfere with enforcement actions.

The media, legal observers, crowd monitors, police liaison, and/or organizers shall never be targeted for dispersal or enforcement action because of their status.